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Berman, Ronald: Memoranda (1975-1984): Correspondence 10

Livingston Biddle

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New Update on Berman

TO: SENATOR

FROM: LB

Handwritten signature

Jan. 20, '76

by Joe Hagan

I was informed ^{last week} this morning that there is a temporary hold on the Berman nomination at the White House. As noted in an earlier memo, Joe relayed to me information he had received ~~a week ago~~ that the White House had prepared the nomination, and was sending it forward. Joe now tells me that Berman is involved ^{planning} in the present hold and that he would like to see you, apparently to have a clear view as to the strength of your opposition. Joe reports to me that Berman believes that the endorsement of the President is very important to his future career, regardless of outcome, and that he therefore does not want to recommend withdrawal of the nomination, or indefinite postponement. Also, I think there is backing and filling in line with your unchanged and unchanging position as I have reported it, to all concerned.

I now recommend this --

when

1) that/you see Berman (Joe is to call Carol and set up a time at your convenience, but reasonably soon) you make it crystal clear to him that you have not changed one iota from

opposing his nomination, as you informed the White House back in September, and as I have informed them subsequently, ^{and you have informed Berman} -- that you

will not change your basic views. I have gone through these in detail for Joe, so that he understands them. And I have reported them to the Press (Phil Kadis of the Star, who called me at home last week after we had talked -- this was Thursday eve. No story yet, but likely to be one soon.)

2. I think that there is a way out of this tangle, which would keep you in a leadership position, and yet would not ~~possibly hurt~~ overly hurt Berman personally, and possibly injure his career. I have told all concerned that I could not foresee a happy ending for Berman if the forces of full confrontation materialize. Obviously a confrontation would not occur if the Administration did not send Berman's name up. In this case he would continue to serve, unless you insisted on White House action, which I doubt you would want to do. The time period involved here is an interesting one, for it would extend until the election only... A new President would probably want a new man (or lady), if Ford should make it all the way he might have different views by next December -- i.e. it would be a time lapse of a year, ~~and~~ during which Berman would be serving in a kind of limbo, probationary manner. If you felt like it, you could relent or change during this time, but I would recommend against giving even the slightest hint that this could happen. However, as noted in an earlier memo, Berman would have time to get a new job, without your escalated criticism coming from direct confrontation to hinder his image and chances.

I think the same ends can be achieved if his name is transmitted and we sit on it in Committee. I feel this can be arranged. Your position would remain unchanged as to the basics you have expressed -- but you could add that you did not wish, under the circumstances, to ruin his career, or limit his options for other jobs. You would be maintaining a status quo until the election... But I would recommend against suggesting this as in any way a deal with Berman -- it would simply be implicit

in the situation. Under these circumstances, I would think that pressures to get action on Berman -- i.e. to provoke confrontation -- would be minimized. If they built up, they would be at Berman's risk and I would think he would be shrewd enough to see the dangers.

The best part of this, it seems to me, is that you would be giving him a fair chance for his future, outside of the Humanities Chairmanship, and that he would be serving a time of probation meanwhile. This would be probation on your terms, under your direction, and I don't see a leadership position for you in this regard being jeopardized.

~~Maximum~~ The key to this scenario is an absolute firmness that you won't budge, no matter what the length of time involved.

I think if Berman feels you might be flexible or might vacillate, he will feel that he has a chance eventually of gaining the upper hand, and will mobilize pressures which can only be disagreeable, ultimately damaging to himself, but a large pain in the neck.

Finally, I'd recommend that if the above materializes -- and you're asked by anyone how long you would wait before taking some definite action -- i.e. how long a probationary period would last -- you would simply say that you would have to make a judgment later on.

